STATEMENT OF TIMOTHY J. RIORDAN
BEFORE THE
U.S. COMMISSION ON CIVIL RIGHTS BRIEFING
REGARDING ENGLISH ONLY POLICIES

I was the attorney primarily responsible for counseling and defending Synchro-Start Products, Inc. in litigation initiated by the Equal Employment Opportunity Commission ("EEOC"), a case cited in the current version of the EEOC'S Compliance Manual at §13(v)(c), *EEOC v. Synchro-Start Products, Inc.*, 29 F. Supp. 2d 911 (N.D. Ill. 1999). In that case, the EEOC filed suit on behalf of a number of Synchro-Start employees whose primary language was not English, alleging that Synchro-Start intentionally violated Tile VII by requiring the employees to speak only English during working hours.

On September 15, 1997, Synchro-Start promulgated a policy to its employees to speak only English while working on the factory floor. The policy was a result of complaints from a number of employees that other employees were perceived to be harassing and insulting them while speaking in their native language, which could not be understood by the complaining employees. The policy had been implemented to diffuse what was developing into a serious morale problem and to avoid potential claims of harassment or discrimination. The Company was also concerned that safety on the production line could be compromised if employees were not all speaking a common language.

Shortly thereafter, an employee filed a complaint with the Equal Employment Opportunity Commission ("EEOC") and after an investigation the EEOC made a determination that there was reasonable cause to believe that the "English Only" policy discriminated against the complaining employee and other employees whose native language was not English. Thereafter, in response to the EEOC's invitation, the Company engaged in good faith negotiations for conciliation and as of April 29, 1998, the Company and the EEOC had basically agreed upon the terms of a settlement, including the posting of a notice to all employees advising of the rescission of the "English Only" policy and execution of a conciliation agreement by the Company, the EEOC and the complaining employee. However, after the forms had been negotiated, the complaining employee refused to sign the documents. The EEOC investigator indicated that the employee had stated that he had no personal interest in the matter, that he had not been damaged in any way, that he simply wanted to bring the matter to the EEOC's attention for investigation and, therefore, he refused to participate in the settlement of the case by way of executing any documents. Although frustrated by the employees' refusal to participate in the settlement, the Company did offer to enter into the settlement as negotiated and, in fact, the Company voluntarily rescinded the policy on July 1, 1998. The EEOC then refused to enter into an agreement based on the prior discussions.

On October 7, 1998, the EEOC contacted the Company's attorneys advising that the EEOC would file a suit on behalf of the employees if the matter was not settled pursuant to an enclosed consent decree. The consent decree was generally consistent with the settlement which had been negotiated earlier; however, it contained an additional requirement for payment of $50,000 to the complaining employee. The Company responded by indicating a willingness to enter into the settlement agreement, with minor modifications, but refused to make any monetary

payment for fear of setting a precedent which would require payment to other employees who had not as yet made a complaint.

The EEOC responded by filing suit notwithstanding that the policy had been rescinded and that the employee who first complained had no interest in pursuing the matter.

Synchro-Start filed a Motion to Dismiss contending that its policy which simply required employees who are bilingual to speak English while working did not constitute an unlawful employment practice and that the EEOC Discrimination Guidelines, 29 C.F.R. §1606.7(a) and (b) shifting the burden to the employer to provide a business justification for an English only policy was invalid as beyond the scope of the agency's authority to interpret Title VII. The District court upheld the validity of the challenged EEOC discrimination guidelines and denied Synchro-Start's Motion to Dismiss based on a finding that the EEOC'S complaint . . . comported with the requirement for a viable Title VII claim."

The parties engaged in discovery which confirmed the following facts.

Synchro-Start was a manufacture of electronic products with approximately 200 employees. Substantially all of the Company's production personnel were first generation immigrants, of Polish, Hispanic and Asian descent. Although, in most instances, their native language was their primary language, all employees spoke English well enough to understand and follow directions and instructions and to perform their job requirements safely and productively. Some of the production supervisors, however, spoke only English and were not able to speak in the other languages.

On numerous occasions, individual employees complained that other employees were speaking in their native foreign languages and using their bilingual capabilities to harass and insult other workers in a language they could not understand. For example, one employee stated that Hispanic employees had spoken in their native language which she could not understand, then they looked at her, laughed and rolled their eyes, making her feel very uncomfortable and intimidated. On each occasion that such complaints were made, the plant manager talked to the supervisors to determine the validity of the complaint and the appropriate response. The supervisors then attempted to deal with the issue by discussing the matter with the group leaders and the effected employees, suggesting that the employees speak English while in the presence of other employees who did not speak the same language, so that feelings would not be hurt and to improve morale and communications.

The plant manager was also contacted by a representative of a temporary employment agency which provided Synchro-Start with employees who advised that two of the temporary employees refused to be sent back to Synchro-Start because the Synchro-Start employees intimidated them and made them uncomfortable by speaking in their own language which the temporary employees could not understand.

In response to the continuing complaints, in September of 1997, the Company instituted a policy that employees should speak only English while working. The policy did not apply while employees were on their own time, such as breaks and lunch. The Company believed that it had no alternative but to initiate this limited policy to avoid conflict, at least while the employees

were on the production line. The Company was concerned that safety on the production line could be compromised and that it might otherwise be exposed to claims by the complaining employees that it had failed to protect their rights. It is important to also note that no employee was disciplined for violating the policy.

Synchro-Start's claim that it had a business necessity for adopting the policy was not only factually supported, but consistent with the EEOC's own Compliance Manual, wherein footnote 48 in its section relating to English Only Rules, the EEOC cites Roman v. Cornell University, 53 F. Supp. 2d 223. 237 (N.D.N.Y.1999) and Long v. First Union Corp., 894 F. Supp. 933, 941(E.D.Va.1995) respectively, for the propositions that "business reasons for an English-only rule may include 'avoiding or lessening interpersonal conflicts, preventing non-foreign language speaking individuals from feeling that they are being talked about in a language they do not understand," and "English-only policy may be legitimate and necessary for business where adopted to "prevent employees from intentionally using their fluency in Spanish to isolate and to intimidate members of other ethnic groups.

The EEOC also failed to produce any evidence to support its allegations that Synchro-Start had intentionally engaged in discriminatory practices or that some Synchro-Start employees were unable to comply with the policy because they were unable to speak any English.

Notwithstanding the EEOC's inability to factually and legally support its claim of discrimination, when offered the opportunity to settle the case for an amount less then the expected future costs of defense, the Company had no practical alternative but to settle, which it did after almost two years of litigation.

It should be clear from the above, that my client and I were frustrated with the EEOC's continued pursuit of this case after the original complaining employee lost interest, the policy was rescinded and facts became clear that there was no discriminatory intent on the part of the company on promulgating the rule.

It is my belief that all interests would have been better served if the EEOC had devoted its resources to remedial and educational activities, rather than the pursuit of punitive remedies against Synchro-Start which had acted in good faith with no intention to discriminate.

Dated: December 10, 2008 Timothy J. Riordan